

Remarks/Arguments

Claims 48, 51, 52 and 54 have been amended to remove the “relative” words, “essentially” and “substantially.” This amendment should not be viewed as an admission that differences or values in Gauss readings due to “background noise” or equipment variability are disclaimed and not literally embraced within the claim.

35 USC 112, first paragraph

Claims 51-54 have been rejected as lacking written description under 35 USC 112, first paragraph. The Examiner has rejected claims 51-54 stating that the specification does not describe the invention as the magnetic properties of the claimed subject matter are not inherently or literally described. The rejection is not understood. Claims 44-49 are not rejected on this ground, yet present limitations relating to magnetic properties. Further, US Patent 6,572,792 was granted on the same specification and the claims present limitations relating to magnetic properties. The reasoning as to why these claims, which also present limitations relating to magnetic properties, raise an issue under 35 USC 112, first paragraph is not understood. As accepted by the Examiner with respect to the non-rejected claims and granted claims, the magnetic properties are inherent to the products produced in the specification and are described therein. For example, Figure 23 illustrates magnetic properties and magnetic properties are explicitly described for several examples. See also Example 11.

While it is true that the additional limitation stating that the Gauss reading is essentially zero or unchanged, as compared to the starting material, is not explicitly described, this fact does not establish that the subject matter is not described. It is first noted that the rejected claims are, substantially, a subgenus of the granted claims, albeit the degree of purity of the copper in the granted claims is not required in the rejected claims. Compare Claims 44 and 52, and Claim 1 of the ‘792 patent and Claim 51, for example. Therefore, it appears that the Examiner agrees that copper which possess magnetic attraction is supported. It is assumed that the issue lies only in the recitation of the Gauss readings (Claims 51, 52 and 54) and magnetism independent of pole (Claim 53). However, the fact that the claimed products possess these properties has been established in the Declaration by Christopher Nagel dated August 16, 2006, the original

which has been filed in USSN 10/659,090. As such, the specific properties relating to the magnetic attraction of the claimed copper is believed to be inherently established and proven with evidence. The Examiner has offered no reasoning in support of the allegation that it is not.

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35 USC 112, second paragraph

Claims 48, 51, 52 and 54 have been rejected as including words such as “substantially” and “essentially,” stating that the specification does not provide definitions of these terms. The claims have been amended to avoid the rejection.

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35 USC 102

Claims 50-54 have been rejected as being anticipated by Svensson et al., Dovgopol et al., or Campbell et al. The Examiner implies that the basis for this conclusion lies in the use of the word “substantially” and “essentially” and that these claims permit the activity that a small amount of iron present can impart. It is believed that the amendments to the claims avoid the issues entirely. With regard to Claim 50, the claim has been cancelled. With regard to Claim 53, it is understood that the presentation of small amounts of iron will not produce pole independent attraction to a magnet and ferromagnetic material.

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Allowed claims

The indication of allowability of Claims 44-47 and 49 and the patentability of Claim 48 over the art is appreciated.

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Conclusion

A general authorization is hereby granted to charge Deposit Account No. 502807 for any fees required under § 37 C.F.R. 1.16 and 1.17 in order to maintain pendency of this application.

In view of the above amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to

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issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned at (978) 251-3509.

5 Respectfully submitted,
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